IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 9-4-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.14193 of 2006

K. Palani ... Petitioner

Vs.

1. State of Tamil Nadu
rep.by the Secretary to Government,
Home Department,
Fort St.George,
Madras - 9.

2. The Inspector General of Police (L&O),
Madras - 4.

3. The Deputy Inspector General of Police,
Trichy.

4. The Superintendent of Police,
Thanjavur West. ... Respondents

This writ petition came to be numbered under Article 226 of Constitution of India, by way of transfer of O.A.No.3828 of 1993 from the file of Tamil Nadu Administrative Tribunal, with a prayer to quash the order of the Government, the first respondent in letter No.112318/Ser.K/91-1 Home dated 30.8.1991 read with G.O.(2D) No.7 Home, dated 11.1.1991 and the connected proceedings of the Inspector General of Police (L&O), Madras, the second respondent herein in Rc.No.191070/API(1)/88 dated 16.12.1988 and the connected proceedings of the Deputy Inspector General of Police, Trichy Range, the third respondent herein in C.No.81/Appeal/87 dated 31.12.1987 and the connected order of the Superintendent of Police, Thanjavur West in D.O.1982/87/PR.7/87 dated 20.11.1987 and direct the respondents to reinstate the petitioner as Police Constable.

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For Petitioner : Mr.S.Vadivelu

For Respondents : Mr.C.Kalaichelvan,
Addl.Govt. Pleader

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O R D E R

Petitioner seeks to quash the order of the Government, the first respondent herein in letter No.112318/Ser.K/91-1 Home dated 30.8.1991 read with G.O.(2D) No.7 Home, dated 11.1.1991 confirming the proceedings of the Inspector General of Police (L&O), Madras, the second respondent herein in Rc.No.191070/API(1)/88 dated 16.12.1988, upholding the order of the Deputy Inspector General of Police, Trichy Range, the third respondent herein in C.No.81/Appeal/87 dated 31.12.1987, affirming the order of the Superintendent of Police, Thanjavur West in D.O.1982/87/PR.7/87 dated 20.11.1987 and direct the respondents to reinstate the petitioner as Police Constable.

2. The brief facts necessary for disposal of this writ petition are as follows.

(i) Petitioner was appointed as Police Constable on 15.7.1977. On 14.3.1986 petitioner and another police constable were supervising Panguni Uthira festival of Rajagopalaswamy Temple, Mannargudi, and there was a crowd near the Merry-Go-round. It is the case of the department that petitioner and the other police constable tried to disburse the crowd and at that time the crowd attacked the petitioner and the other police constable. In the said incident, petitioner got injured. The other police constable by name Abdul Hameed preferred a complaint in crime No.99 of 1986 under sections 147, 341, 324 of IPC. The said complaint was registered at 11.00 p.m. on 14.3.1986.

(ii) One Sudarsan, son of Muniandi preferred a complaint against the petitioner and the said Abdul Hameed for the same incident in crime No.100/86 under section 341 and 323 IPC. The crux of the complaint was that the petitioner demanded bribe amount and when it was refused, he was hit by the petitioner and the other police constable. The Revenue Divisional Officer conducted an enquiry under Police Standing Order 145 and the petitioner was placed under suspension on 17.2.1987, followed by issuance of a charge memo in PR NO.7 of 1987 on 27.5.1987. The charges are,

(1) Highly reprehensible conduct in having demanded money as illegal gratification from one Sudarsan on 14.3.1986 at 23.00 hours.
(2) High handed action and unbecoming of a Police Constable in having assaulted one Sudarsan, son of Muniyandi of Melkondazhi village who was running his business "Merry-Go-round" in front of Rajagopalaswamy Koil, Mannargudi on 14.3.1986 at 23.00 hrs."

Petitioner denied the charges. An enquiry was conducted by the Deputy Superintendent of Police and the Enquiry Officer submitted his report on 10.11.1987. The Enquiry Officer found that the petitioner was guilty of both the charges and based on the same, the petitioner was removed from service by the Superintendent of Police by order dated 20.11.1987.

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(iii) Petitioner filed an appeal before the Deputy Inspector General of Police, which was rejected on 31.12.1987. Review petition filed by the petitioner before the Inspector General of Police was also rejected on 16.12.1988. Petitioner preferrred a mercy petition before the Government, which was also rejected in G.O.(2D)No.7 Home Department dated 11.1.1991. Petitioner's petition for reconsideration was also rejected on 30.8.1991. Hence the petitioner has field the original application challenging the order of removal from service.

(iv) It is the case of the petitioner that the Enquiry Officer's findings are perverse and copy of the Enquiry Officer's report was not furnished to him before imposing punishment and therefore the principles of natural justice is violated. The main ground of attack with regard to the Enquiry Officer's report is, he relied upon the evidence of PWs-1, 2, 4 and 6, who do not support the case of the prosecution. The enquiry Officer found that the said prosecution witnesses 1, 2, 4, and 6 eventhough have not deposed anything during the enquiry against the petitioner, they have given statements before the Revenue Divisional Officer, who conducted preliminary enquiry implicating the petitioner. Hence the Enquiry Officer unilaterally relied upon the statement given before the Revenue Divisional Officer and at that point of time petitioner was not given any time to cross-examine the said statement made by the witnesses and therefore placing reliance on the said statements to prove the charges against the petitioner is totally erroneous and unsustainable.

(v) According to the petitioner, the report of the Revenue Divisional Officer is only a fact finding report and the same cannot be the basis for proving the charges against the petitioner, particularly when a regular departmental enquiry was conducted for the charges framed under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. The Enquiry Officer's finding in paragraph 23 proceeds on the basis that "inasmuch as the delinquent had realised that these statements were against him, he had thought fit to gain them over at this oral enquiry. In this view, I am of the opinion that the evidence of PWs.1, 2, 4 and 6 deserves no credence but that their statements made before the Revenue Divisional Officer are more valid. Hence I have no hesitation in holding the charge proved against the delinquent beyond all reasonable doubt."

3. In the counter affidavit filed by the respndents, in paragraph 11 it is stated as follows,

> "... it is submitted that the Revenue Divisional Officer is a quasi Judicial Magistrate and Executive Magistrate and the evidence given before him is more reliable and thus credence was given to the evidence adduced before the Revenue Divisional Officer when the PWs turned the table and go against their own statements given before the R.D.O. Executive Magistrate. The version given at the earlier point of time immediately after the occurrence was taken into consideration and orders were passed."

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4. The learned counsel appearing for the petitioner on the finding given by the Enquiry Officer based on which charges were held proved pursuant to which petitioner was terminated from service, submitted that the said findings of the Enquiry Officer is patently illegal in view of the judgments of the Supreme Court reported in (2004) 10 SCC 87 and the Division Bench decision of this Court made in W.P.No.29862 and 32581 of 2002 dated 22.2.2005. The said judgments were followed by me in the decision reported in (2006) 2 MLJ 202. The learned counsel also submitted that in the decision reported in 2006 (3) MLJ 900, A.Kulasekaran, J., has also taken the same view following the decisions of the Supreme Court reported in AIR 1969 SC 983, (1999) 2 SCC 10 and therefore the impugned order of punishment is liable to be set aside.

5. The learned Additional Government Pleader on the basis of the counter affidavit submitted that the charge against the petitioner being serious, preliminary enquiry was ordered to be conducted by the Revenue Divisional Officer, Mannargudi, under the Police Standing Order 145 and directed to submit a report to the Government and based on the report departmental action was initiated in PR No.7 of 1987 under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955. The Deputy Superintendent of Police, Mannargudi, conducted regular enquiry and held that the charges are proved pursuant to which the petitioner was removed from service and his appeal, revision, review, and mercy petitions, all having been dismissed, the petitioner is not entitled to challenge the findings given in the enquiry report and the consequential punishment imposed. It is pointed out that in para 11 of the counter affidavit it is stated that the Revenue Divisional Officer is a Quasi-Judicial Magistrate and Executive Magistrate and the evidence given before him is more reliable and hence credence was given to the evidence adduced before the Revenue Divisional Officer when the prosecution witnesses went against their own statement given before the Revenue Divisional Officer, the Executive Magistrate. The version given at the earlier point of time immediately after the occurrence was taken into consideration and orders were passed. The learned Additional Government Pleader therefore submitted that the petitioner cannot now contend that no credence can be given to the statement given before the Revenue Divisional Officer.

6. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Additional Government Pleader.

7. There is no dispute with regard to the registering of criminal case against the petitioner, conduct of preliminary enquiry by the Revenue Divisional Officer and the subsequent departmental enquiry. The learned counsel for the petitioner submitted that the criminal case registered has ended in acquittal. The RDO enquiry was only a preliminary enquiry based on which departmental enquiry was ordered. During the preliminary enquiry conducted by the Revenue Divisional Officer, statements were recorded without giving opportunity to the petitioner to cross examine the

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credibility of the said statements. During the departmental enquiry the prosecution witnesses admittedly have not supported the charges and gave a different version without implicating the petitioner for the said charges.

8. Whether the statements made during the preliminary enquiry not corroborated by cross examination can be validly relied on by the Disciplinary authority was considered by the Supreme Court in the decision reported in (2004) 10 SCC 87 (Union of India v. Mohammed Ibrahim). The Honourable Supreme Court held that the order of dismissal was vitiated as the findings have been based on consideration of statement of the persons examined during the preliminary enquiry and for the said fact the Tribunal set aside the order of dismissal, which was upheld by the High court and there is no error in the order setting aside the dismissal order.

9. A Division Bench of this Court by Judgment dated 22.2.2005 in W.P.Nos.29862 & 32581 of 2002 (The Deputy Inspector General of Police, Villupuram and others v. V.Vanniaperumal and others) upheld the order of the Tribunal which set aside the order of removal from service. Paragraphs 6 and 8 of the judgment can be usefully referred to, which reads thus,

> "6. We have carefully considered the relevant materials and the rival contentions. We have already referred to the charges levelled against the applicants. It is also relevant to note that apart from the applicants two more officers have also been implicated along with them. They are one Sattanathan, Sub-Inspector of Police and Antony, Inspector of Police. It is brought to our notice that Sattanathan is no more and so far as the other officer Antony is concerned lesser punishment has been imposed. Now we are concerned with the charges levelled against both the applicants. In the light of the conclusion arrived at by the Tribunal, we perused the finding of the Enquiry Officer. It is not in dispute that all the prosecution witnesses except PW.3, who is none other than the Deputy Superintendent of Police, the other witnesses viz., P.Ws.1,2,4 and 5 turned hostile before the Enquiry Officer and not supported their earlier statement made at the preliminary enquiry. The Enquiry Officer having noted the above aspect curiously submitted a report holding that all the three charges levelled against them are proved based on the preliminary enquiry.
>
> 7. .....
>
> 8. In our case, we have already referred to the fact that the prosecution witnesses viz., P.Ws.1,2,4 and 5 turned hostile and not supported their preliminary version. However, the Enquiry Officer basing reliance on their earlier statement in the preliminary enquiry found that all the charges levelled against them are proved. In the light of the decision of the Supreme Court

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> referred to above, after full-fledged enquiry was held the preliminary enquiry had lost its importance. Further, we find no substance or material to arrive at a conclusion that "since all the three counts were proved by the prosecution beyond reasonable doubts, convincingly, I agree with the findings of the Enquiry Officer, ...". We are satisfied that there is no material to arrive at such a conclusion by the Deputy Inspector General of Police, while passing an order removing the applicants from service. All these aspects have been considered by the Tribunal in a proper manner and there is no acceptable material or evidence to take different view as that of the Tribunal. We find no merits in both the writ petitions. Accordingly, they are dismissed. No costs. Consequently, the connected miscellaneous petitions are dismissed."

The said conclusion was arrived at by the Division Bench based on the decision of the Honourable Supreme Court reported in 1997 I SCC 299 (Narayana Dattatraya Ramteerthakhar v. State of Maharashtra).

10. The above referred decision of the Division Bench was followed by me in the order dated 15.2.2006 in W.P.No.27019 of 2005 (B.Bals Murugan v. The Inspector General of Police, Madurai-2 and Two others), wherein the order of punishment was set aside.

11. I have also followed the above decisions and allowed similar writ petition and the same is reported in (2006) 2 MLJ 202 (T.Pitchai v. Deputy Inspector General of Police, Tirunelveli) by setting aside the order of dismissal with a direction to reinstate the petitioner therein with all service benefits.

12. In the decision reported in (2006) 3 MLJ 900 (H.C. Lenin v. Commissioner of Police), A.Kulasekaran, J., has taken a similar view following the decision of the Honourable Supreme Court reported in AIR 1999 SC 677 = (1999) 2 SCC 10 (Kuldeep Singh v. Commisisoner of Police and others), wherein the Honourable Supreme Court in paragraphs 32 and 33 held thus,

> "32. In State of Mysore v. Shivabasappa Shivappa Makapur, the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned and it was his previous statement recorded at an earlier stage which was brought on record. That statement was put to the witness who acknowledged having made that statement. The witness was thereafter offered for cross-examination and it was held that although the statement (examination-in-chief) was not recorded in the presence of the delinquent, since the witness had been offered for cross-examination after he acknowledged having made the previous statement, the rules of natural justice were

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sufficiently complied with.

33. In Kesoram Cottton Mills Ltd. v. Gangadhar and State of U.P. v. Om Prakash Gupta the above principles were reinterated and it was laid down that if a previous staement of the witness was intended to be brought on record, it could be done provided the witness was offered for cross-examination by the delinquent."

13. In view of the above cited settled position of law on this aspect and having regard to the fact that there is no controversy about the enquiry offier's finding of guilt of the petitioner solely relying upon the statement given before the Revenue Divisional Officer during the preliminary enquiry and there was no occasion to cross examine the said witness during the preliminary enquiry, I am of the view that the charges framed against the petitioner cannot be said to be validly proved. Hence the petitioner is bound to succeed in this writ petition challenging the order of dismissal passed based on the erroneous findings given by the Enquiry Officer in his reort. The consequential orders passed by the appellate authority, revisional authority and the Government in the mercy petition are also set aside.

14. Having regard to the fact that the incident has occurred 20 years ago, no purpose will be served by remitting the matter for conducting fresh enquiry at this stage. Therefore I am of the view that ends of justice would be met by directing the respondents to reinstate the petitioner with continuity of service without backwages. The petitioner is not entitled to get backwages on the principles of "no work, no pay". The reinstatement order shall be passed in favour of the petitioner with continuity of service with other benefits other than backwages, within a period of four weeks from the date of receipt of copy of this order.

The writ petition is allowed in the above terms. No costs.

vr

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government, Home Department,
   Fort St.George, Madras - 9.

2. The Inspector General of Police (L&O),
   Madras - 4.

3. The Deputy Inspector General of Police,
   Trichy.

4. The Superintendent of Police,
   Thanjavur West.

+1 cc to Mr.S.Vadivelu, Advocate Sr.No.222407.

+1 cc to the Government Pleader Sr.No.22891.

GV(CO)
dcp/13.4.07

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